IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

WP(C).No. 18573 of 2006(J)

OS.656/2004 of I ADDL.SUB COURT,ERNAKULAM
.....

PETITIONER:

P.D.AUGUSTINE,
S/O.DEVASSY, PANACKAL HOUSE,
BOAT JETTY ROAD, VADUTHALA.

BY ADV. SRI.A.T.ANILKUMAR

RESPONDENTS:

A.T.VARGHESE,
S/O.THOMAS, KALATHUPARAMBIL HOUSE,
BOAT JETTY ROAD, VADUTHALA.

BY ADV. SRI.TONY PETTAH
SRI.THAMBI JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF PLAINT IN OS 656/04

EXT.P2: COPY OF WRITTEN STATEMENT IN OS 656/04

EXT.P3: COPY OF HAND WRITTEN ORDER OF 1ST ADDL.SUB JUDGE IN OS 656/04

//True copy//

SHW TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.18573 OF 2006

Dated 17th January 2007

J U D G M E N T

This petition is filed under Article 227 of Constitution of India challenging the order of First Additional Sub court, Ernakulam directing plaintiff petitioner to pay deficit stamp duty and penalty after impounding the document.

2. Learned counsel appearing for petitioner submitted that document impounded as per order dated 12/7/2006 was admitted in evidence and marked as an exhibit and after closing of the evidence and hearing the arguments learned Sub Judge, passed the order which is challenged in this petition. The order reads;

> "Impound the document and recover the deficit stamp duty of 5% in every 100 rupees in the amount and penalty."

Section 33 of Kerala Stamp Act empowers the court at the time when document is sought to be admitted in evidence to decide the question whether the instrument

is sufficiently stamped or not. If the court finds that instrument is not sufficiently stamped, it is to be impounded. Section 37 provides how to proceed with an instrument which is impounded. If the person pays the requisite deficit stamp duty and penalty, even though the document is not stamped or not sufficiently stamped, it is to be admitted in evidence and if not, the original instrument impounded shall be sent to District Collector for proceeding as provided under Section 39 of the Kerala Stamp Act. Section 35 mandates that where an instrument has been admitted in evidence, such admission shall not except as provided in Section 59, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. Therefore, if the document has been admitted in evidence, then thereafter learned Sub Judge is not competent to impound the document and direct the party to pay deficit stamp duty or penalty. Section 59 enables the appellate court or the revisional court to decide the sufficiency of stamp duty paid. It enables the said court to direct payment of deficit stamp duty and penalty. But the same trial court cannot impound the document once admitted in

evidence and marked, because of embargo created under Section 35 of the Kerala Stamp Act. Order passed by learned Sub Judge directing impounding of the document which has already been admitted in evidence is therefore quashed.

Writ petition is allowed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.